STATE OF MICHIGAN
IN THE 30th JUDICIAL CIRCUIT COURT
INGHAM COUNTY

MICHIGAN DEPARTMENT
OF ENVIRONMENTAL QUALITY,

Plaintiff,

CASE NO: 03-1862 CE

Honorable JAMES R. GIDDINGS

v

DIAMOND CHROME PLATING, INC.

Defendant.

_____/

Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Attorney for Plaintiff
Environment, Natural Resources, and Agriculture Division
5th Floor, South Tower, Constitution Hall
525 West Allegan Street
Lansing, Michigan 48913
(517) 373-7540

_____/

There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in the complaint.

COMPLAINT

1. This is a civil action brought under Parts 31, Water Resources Protection; 55, Air Pollution Control; 201, Environmental Remediation; and 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act (NREPA), 1994 PA 451, as amended, MCL 324.31101 *et seq*, MCL 324.5501 *et seq*, MCL 324.20101 *et seq*, and MCL 324.11101 *et*

seq, to obtain injunctive relief to eliminate illegal discharges into the waters of the State and to require the Defendant, Diamond Chrome Plating, Inc. to implement response activities at its plating facility to comply with Parts 31, 55, 201 and 111 of the NREPA. Plaintiff also seeks recovery of response activity costs, enforcement and surveillance costs, and civil fines under Parts 31, 55, 201 and 111 of the NREPA.

2. This Court has personal jurisdiction in this matter under MCL 600.711 and has subject matter jurisdiction pursuant to MCL 324.3115(1), MCL 324.5530, MCL 324.20137(3) and MCL 324.11151(1).

3. Venue is proper in this Court under the Revised Judicature Act, MCL 600.1631; and pursuant to MCL 324.3115(1), MCL 324.5530, MCL 324.20137(3) and MCL 324.11151(1).

PARTIES

4. Plaintiff, Michigan Department of Environmental Quality (MDEQ), is a principal department within the Executive Branch of the State of Michigan. Statutory authority, powers, duties, functions and responsibilities previously vested in the Michigan Department of Natural Resources (MDNR) pursuant to Part 5 of the NREPA, MCL 324.501 *et seq*, were transferred to the MDEQ pursuant to Executive Orders 1995-16 and 1995-18.

5. Defendant, Diamond Chrome Plating, Inc. (Diamond Chrome), is a Connecticut Corporation with a plating operation located in the city of Howell, Livingston County, Michigan.

COMMON ALLEGATIONS

6. Diamond Chrome owns property located at 604 South Michigan Avenue, City of Howell, Livingston County. The Diamond Chrome property is approximately 1.4 acres in size.

7. Since at least 1953, Diamond Chrome has performed hard chrome plating at this location. Diamond Chrome generates hazardous wastes during its operations.

8. The facility includes several chrome plating tanks with two packed-bed wet scrubbers and two composite mesh pad scrubbers used as air-cleaning devices. The air-cleaning devices and associated duct work are operated under two separate Air Use Permits to Install Nos. 367-83B and 386-85A issued pursuant to Part 55.

9. Storm water from the facility is discharged to the Marion/Genoa Drain. Diamond Chrome has been issued Certificate of Coverage MIS210222 issued under National Pollution Discharge Elimination System NPDES General Permit MIS210000 for storm water discharged from industrial facilities. This authorization specifically prohibits discharges bearing contaminants in excess of state water quality standards.

10. A routine biosurvey by MDEQ staff in June 2000, found elevated levels of hexavalent chromium in the Marion/Genoa Drain and the south branch of the Shiawassee River. On October 15th through 19th, 2000, an investigation conducted by MDEQ staff confirmed that levels of hexavalent chromium were in excess of water quality standards in the Marion/Genoa Drain. Data collected by MDEQ staff from the Diamond Chrome facility in 2001 and 2002 indicate that Diamond Chrome is a source of hexavalent chromium in the Marion/Genoa Drain

via the City of Howell storm sewer. The Marion/Genoa Drain is a surface water of the State of Michigan.

11. Compliance inspections conducted by MDEQ staff in 2000 and 2001 revealed that the air pollution control equipment at Diamond Chrome leaks chromic acid condensate. Stains on the roof beneath air pollution control equipment ducts indicated flow of chromic acid condensate toward downspout inlets. Precipitation events cause the condensate to be discharged to the facility's storm water drainage system. Visibly contaminated soil was observed under leaking air pollution control equipment ducts on the east side of the plant. MDEQ staff also noted that materials and equipment visibly contaminated with chromic acid were stored uncovered outside the building resulting in additional releases or threats of releases of hazardous substances to the environment. MDEQ further observed several violations of the hazardous waste management requirements for generators of hazardous waste established under Part 111.

12. On September 6 and 11, 2001 MDEQ staff inspected the Facility. During this inspection MDEQ noted that the plastic liner for a chromic acid containment pit did not fully cover the underlying cinder block walls of the pit and the uncovered cinder blocks were stained with chromic acid. The unlined stained portion of the pit represents a potential point of release of hazardous substances at Diamond Chrome. MDEQ staff also sampled contaminated soils and releases from the air pollution control equipment. The results of these samples revealed that hazardous wastes were released to the environment from the air pollution control equipment. The results of soil samples demonstrated that soils at the Facility were contaminated with chromium, copper, lead and cadmium. On September 11, 2001 MDEQ collected samples from groundwater monitoring wells installed by Diamond Chrome. Results from these samples

revealed that groundwater had been contaminated with tetrachlorethylene and chromium. On-going sampling of storm water discharged from the Facility has revealed that Diamond Chrome consistently violates state water quality standards for hexavalent chromium.

13. In 1994, Diamond Chrome removed two 1,000-gallon underground storage tanks (USTs) used to store gasoline and diesel fuel. Diamond Chrome initiated an investigation of releases from these tanks pursuant to Part 213, Leaking Underground Storage Tanks, of the NREPA. The releases from these tanks are commingled with releases of other hazardous substances at the Diamond Chrome facility. On May 31, 2002, Diamond Chrome informed the MDEQ that it was choosing to perform response activities related to releases from the USTs pursuant to Part 201, as provided for under MCL 324.21304a(5) of Part 213.

14. Diamond Chrome initiated the installation of a 4,000-gallon storm water interceptor tank on April 16, 2003. The installation involved the excavation of approximately one hundred and eighty cubic yards of soils. During the excavation, portions of two underground concrete tanks previously used to store plating wastewater treatment sludge, a listed hazardous waste with the waste code F006, were excavated. The materials were placed in waste piles in the north parking lot of the Diamond Chrome facility rather than in containers or tanks, as required by Part 111. The soils were partially exposed during a heavy rain event which may have resulted in additional unlawful discharges to the waters of the State.

15. Tetrachloroethylene, dichloroethene, trichloroethylene, other chlorinated solvents, benzene, ethylbenzene, toluene, xylenes, other petroleum related compounds, chromium, cadmium, copper, and lead, are present at the facility in soils and groundwater in concentrations that exceed the generic residential clean-up criteria established under Part 201.

COUNT I – PART 31

16. Paragraphs 1 through 15 of this Complaint are restated and incorporated by reference.

17. Section 3109 of Part 31 prohibits the direct or indirect discharge of any substance into the waters of this State, that is or may be injurious to any of the following:

(a) To the public health, safety, or welfare.

(b) To domestic, commercial, industrial, agricultural, recreational, or other uses that are being made or may be made of such waters.

(c) To the value of utility or riparian lands.

(d) To livestock, wild animals, birds, fish, aquatic life, or plants or to the growth, propagation, or the growth or propagation thereof be prevented or injuriously affected; or whereby the value of fish and game is or may be destroyed or impaired. MCL 324.3109.

18. Section 3112 of Part 31 of the NREPA, MCL 324.3112, prohibits the discharge of any waste or waste effluent into the waters of the State without a permit. Groundwater is a water of the State.

19. The discharge of polluting materials is specifically prohibited by the General Permit in Part I, Section D. Special Conditions at paragraphs 2 and 3.a. Paragraph 2 states in part, "At the time of discharge, there shall be no violation of the Water Quality Standards in the receiving waters as a result of this discharge." Paragraph 3.a. states in part, "Discharges of material other than storm water shall be in compliance with an NPDES permit (other than this permit) issued for the discharge."

20. As set forth above, Diamond Chrome has caused numerous discharges to the waters of the State that are or may become injurious. These discharges to the waters of the State were unpermitted.

21. Section 3115(1) of Part 31, MCL 324.3115(1), provides that the Attorney General may commence a civil action for appropriate relief, including a permanent or temporary injunction, for violations of the provisions of Part 31 or its rules. MCL 324.3115(1) also provides in part:

> In addition to any other relief granted under this subsection, the court shall impose a civil fine of not less than $2,500.00 and may award reasonable attorney fees and costs to the prevailing party. However, the maximum fine imposed by the court shall be not more than $25,000.00 per day of violation.

COUNT II – PART 55

22. Paragraphs 1 through 21 of this Complaint are restated and incorporated by reference.

23. R 336.1910 provides that an air-cleaning device shall be installed, maintained, and operated in a satisfactory manner and in accordance with the Part 55 rules and existing law. Compliance with R 336.1910 is specifically required in Special Condition No. 18 of Permit to Install 367-83B, and Special Condition 15 of Permit to Install 386-85A.

24. R 336.1370(1) provides that:

> Collected air contaminants shall be removed as necessary to maintain the equipment at the required operating efficiency. The collection and disposal of air contaminants shall be performed in a manner so as to minimize the introduction of contaminants to the outer air.

25. As set forth above, Diamond Chrome's installation, maintenance and operation of the air-cleaning devices and associated duct work has failed to comply with R 336.1910, thereby causing releases of chromium into the environment. Diamond Chrome's failures to properly dispose of such releases of chromium were in violation of R 336.1370(1).

26. Section 5530 of Part 55, MCL 324.5530, provides in part as follows:

> (1) The attorney general may commence a civil action against a person for appropriate relief, including injunctive relief, and a civil fine as provided in subsection (2) for any of the following:
>
> (a) Violating this part or a rule promulgated under this part.
>
> * * *
>
> (c) Failure to comply with the terms of a permit or an order issued under this part.
>
> * * *
>
> (2) In addition to any other relief authorized under this section, the court may impose a civil fine of not more than $10,000.00 for each instance of violation and, if the violation continues, for each day of continued violation.
>
> * * *
>
> (4) In issuing a final order in an action brought pursuant to this section, the court may award costs of litigation, including, but not limited to, reasonable attorney and expert witness fees, to the prevailing or substantially prevailing party if the court determines that such an award is appropriate.

COUNT III – PART 201

27. Paragraphs 1 through 26 of this Complaint are restated and incorporated by reference.

28. The substances described above that have been detected in the soils and groundwater are "hazardous substances" under Section 20101(1)(t) of Part 201, MCL

324.20101(1)(t). Hazardous substances released by Diamond Chrome constitute a "release" or "threat of release" as those terms are defined in Section 20101(1)(bb) and 20101(1)(o) of the NREPA, MCL 324.20101(1)(bb) and MCL 324.20101(1)(o).

29. These hazardous substances have been released into the environment in excess of the concentrations which satisfy the requirements of Section 20120a(1)(a) or (17) of Part 201 or the cleanup criteria for unrestricted residential use under Part 213 of the NREPA, and constitute a "facility" as defined by Section 20101(o) of Part 201, MCL 324.20101(o).

30. Diamond Chrome is the owner and operator of a Facility and is responsible for an activity causing a release or threat of release of hazardous substances. Diamond Chrome is liable under Section 20126(1)(a) of the NREPA, MCL 324.20126(1)(a).

31. Section 20114(1) of Part 201, MCL 324.20114(1), provides in part as follows:

> Except as provided in subsection (4), an owner and operator of property who has knowledge that the property is a facility and who is liable under section 20126 shall do all of the following:
>
> (a) Determine the nature and extent of a release at the facility.
>
> * * *
>
> (g) Diligently pursue response activities necessary to achieve the cleanup criteria specified in this part and the rules promulgated under this part....
>
> (h) Upon written request by the department, take the following actions:
>
> (i) Provide a plan for and undertake interim response activities.
>
> (ii) Provide a plan for and undertake evaluation activities.
>
> (iii) Take any other response activity determined by the department to be technically sound and necessary to protect the public health, safety, welfare, or the environment.

(iv) Submit to the department for approval a remedial action plan that, when implemented, will achieve the cleanup criteria specified in this part and the rules promulgated under this part.

(v) Implement an approved remedial action plan in accordance with a schedule approved by the department pursuant to this part.

32. Section 20107a of Part 201, MCL 324.20107a, provides in part:

(1) A person who owns or operates property that he or she has knowledge is a facility shall do all of the following with respect to hazardous substances at the facility:

(a) Undertake measures as are necessary to prevent exacerbation of the existing contamination.

(b) Exercise due care by undertaking response activity necessary to mitigate unacceptable exposure to hazardous substances, mitigate fire and explosion hazards due to hazardous substances, and allow for the intended use of the facility in a manner that protects the public health and safety.

(c) Take reasonable precautions against the reasonably foreseeable acts or omissions of a third party and the consequences that foreseeably could result from those acts or omissions.

33. Diamond Chrome has failed to diligently pursue response activities to determine the nature and extent of the release, and to take necessary interim response activities as required by Section 20114. It has also failed to exercise due care as required by Section 20107a.

34. Section 20126a of the NREPA, MCL 324.20126a(1)(a), provides:

(1) Except as provided in section 20126(2), a person who is liable under section 20126 is jointly and severally liable for all of the following:

(a) All costs of response activity lawfully incurred by the state relating to the selection and implementation of response activity under this part.

* * *

(3) The amounts recoverable in an action shall include interest. This interest shall accrue from the date payment is demanded in writing, or the date of expenditure or damage, whichever is later. The rate of interest on the outstanding

unpaid balance of the accounts recoverable under this section shall be the same rate as specified in section 6013(5) of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being section 600.613 of the Michigan Compiled Laws.

35. As a result of releases and threatened releases of hazardous substances by Diamond Chrome, the State of Michigan (State) has incurred and is continuing to incur response activity costs at the Facility.

36. Section 20137(1) of Part 201, MCL 324.20137(1), provides in part as follows:

In addition to other relief authorized by law, the attorney general may, on behalf of the state, commence a civil action seeking 1 or more of the following:

(a) Temporary or permanent injunctive relief necessary to protect the public health, safety, or welfare, or the environment from the release or threat of release.

(b) Recovery of state response activity costs pursuant to Section 20126a.

* * *

(d) A declaratory judgment on liability for future response costs and damages.

* * *

(f) A civil fine of not more than $10,000 for each day of violation of this part or a rule promulgated under this part. A fine imposed under this subdivision shall be based upon the seriousness of the violation and any good faith efforts of the person to comply with this part or a rule promulgated under this part.

* * *

(k) Any other relief necessary for the enforcement of this part.

COUNT IV – PART 111

37. Paragraphs 1 through 36 are incorporated by reference.

38. Hazardous waste is comprehensively regulated under Part 111 and the Federal RCRA, 42 USC 6901 *et seq*, from its generation until its disposal.

39. Section 3006 of RCRA, 42 USC 6926, provides that a state may obtain federal authorization to administer the RCRA hazardous waste management program in that state. On October 30, 1986, the U.S. EPA granted final authorization to the State of Michigan to administer a RCRA hazardous waste management program in Michigan in lieu of the federal program. 40 CFR 271, 51 Fed Reg 36804 (Oct 16, 1986). Michigan, accordingly, has assumed primary responsibility for insuring the proper management of hazardous waste within its boundaries.

40. Pursuant to its authority under Part 111 and consistent with its authorization under RCRA, the MDEQ has promulgated administrative rules pertinent to the identification, generation, treatment, storage, disposal, and transportation of hazardous waste in Michigan. These rules are found at 2000 MR 14, R 299.9101 – 11107 and were effective on September 11, 2000.

41. Section 11126 of Part 111, MCL 324.11126, requires the MDEQ to coordinate and integrate the provisions of Part 111 with appropriate state and federal law, including RCRA.

42. Section 11105 of Part 111, MCL 324.11105, provides that a person "shall not generate, dispose, store, treat, or transport hazardous waste in this state without complying with the requirements of this part."

43. Diamond Chrome is a "person" for purposes of Part 111, MCL 324.301(g) and Rule 299.9106(i) of Part 111.

44. Since 1980 Diamond Chrome has been a "generator" of hazardous waste as defined in Section 11103(2) of Part 111, MCL 324.11103(2), Rule 104a of the Part 111 Rules, and Rule 299.9104a.

45. Rule 299.9302(1) requires that persons who generate a waste determine if the waste is a hazardous waste either by testing or by applying knowledge of the hazardous characteristics of the waste in light of the materials or processes used. During the MDEQ's inspections, as set forth above, the MDEQ determined that Diamond Chrome failed to determine if wastes were hazardous wastes, including but not limited to chromium that leaked from the air cleaning devices and associated duct work, and storm water catch basin cleanout from the facility's truck well.

46. Rule 299.9306(1) states in pertinent part:

> Rule 306. (1) Except as provided in subrules (4), (5), and (6) of this rule, a generator may accumulate hazardous waste on-site for 90 days or less without an operating license if he or she complies with all of the following requirements:
>
> (a) The waste is managed in accordance with 1 or more of the following methods:
>
> (i) The waste is placed in containers, the generator complies with the provisions of 40 C.F.R. part 265, subparts I, AA, BB, and CC, the generator complies with the containment requirements of 40 C.F.R. §264.175, and the generator documents the inspections required pursuant to the provisions of 40 C.F.R. §265.174. The generator shall maintain the inspection records on-site for a period of not less than 3 years from the date of the inspection. The period of retention shall be extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.
>
> * * *
>
> (b) The date upon which each period of accumulation begins and the hazardous waste number of the waste are clearly marked and visible for inspection on each container.

(c) While being accumulated on-site, each container and tank is labeled with the words "Hazardous Waste."

(d) The generator complies with the requirements for owners or operators in the provisions of 40 C.F.R. part 265, subparts C and D, and 40 C.F.R. §265.16 and 40 C.F.R. §268.7(a)(5).

* * *

47. Section 11118(1) of Part 111 of the NREPA states:

Sec. 11118. (1) Except as otherwise provided in section 11122, a person shall not establish a treatment, storage, or disposal facility without a construction permit from the department. A person proposing the establishment of a treatment, storage, or disposal facility subject to the construction permit requirement of this part, but not including a limited storage facility, shall make application for a construction permit to the department on a form provided by the department.

48. Section 11123(1) of Part 111 of the NREPA states:

Sec. 11123. (1) Unless a person is complying with subsection (5) or a rule promulgated under section 11127(4), a person shall not conduct, manage, maintain, or operate a treatment, storage, or disposal facility within this state without an operating license from the department.

49. During an August 15, 2001 inspection the MDEQ observed hazardous wastes releases (chromic acid) from the air cleaning devices and associated duct work. These wastes were allowed to mix with precipitation and be discharged with storm water. The MDEQ also observed that (a) wastewater treatment sludge, a listed (F006) hazardous waste pursuant to Rule 299.9220, was released in the truck well in flow paths to a storm water catch basin, (b) Diamond Chrome had ground up fluorescent light bulbs prior to placement in the F006 roll off box in violation of Part 111, and (c) Diamond Chrome had disposed of corrosive hazardous waste by draining drums outside the door near the roll off box area. Samples of chromic acid condensate released from the air pollution control duct work, collected by staff of the DEQ on September 6, 2001, confirmed that these materials were characteristically hazardous for corrosivity (D002),

cadmium (D006), chromium (D007) and lead (D008) pursuant to Rule 299.9212. During a May 20, 2002 inspection the MDEQ observed additional releases of chromium from the air cleaning devices and associated duct work, and F006 wastewater treatment sludge in the truck well. The release, and/or treatment of the materials identified above, is in violation of Rule 299.9306(1), and Sections 11118(1) and 11123(1) of Part 111 of the NREPA.

50. As set forth above, Diamond Chrome excavated soils and portions of two underground storage tanks used to store a listed hazardous waste during the installation of the storm water interceptor tank. The materials were commingled and placed and stored in a pile in the north parking lot of the Diamond Chrome facility in violation of Rule 299.9306(1) and Sections 11118(1) and 11123(1) of Part 111 of the NREPA.

51. 40 CFR 265.173 states:

(a) A container holding hazardous waste must always be closed during storage, except when it is necessary to add or remove waste.

(b) A container holding hazardous waste must not be opened, handled, or stored in a manner which may rupture the container or cause it to leak.

52. During the August 15, 2001 inspection, the MDEQ observed two hazardous waste containers in the waste accumulation area that were not stored closed in violation of Rule 299.9306(1)(a) and 40 CFR 265.173(a). The MDEQ also observed hazardous waste containers stacked in a haphazard fashion against the wall of the west truck well. These containers were stored in a manner which may rupture the container or cause it to leak in violation of Rule 299.9306(1)(a) and 40 CFR 265.173(a).

53. 40 CFR 264.175 states in pertinent part:

> (a) Container storage areas must have a containment system that is designed and operated in accordance with paragraph (b) of this section, except as otherwise provided by paragraph (c) of this section.
>
> (b) A containment system must be designed and operated as follows:
>
> (1) A base must underly the containers which is free of cracks or gaps and is sufficiently impervious to contain leaks, spills, and accumulated precipitation until the collected material is detected and removed. . . .

54. During the August 15, 2001 inspection of the Diamond Chrome facility, the MDEQ observed several violations of Rule 299.9306(1)(a), (b) and (c), and 40 CFR 264.175. These violations included hazardous waste containers stored in an area without an impervious base, and improperly labeled hazardous waste containers.

55. 40 CFR 265.16 requires generators of hazardous waste to conduct annual training reviews on hazardous waste management for employees, and to maintain records of such training. During the August 15, 2001 inspection, the MDEQ observed that Diamond Chrome failed to provide annual reviews of the required training and failed to maintain up to date training records in violation of R 299.9306(1)(d) and 40 CFR 265.16.

56. Section 11151(1) of Part 111 provides that the Attorney General may commence a civil action for appropriate relief for violations of Part 111 or the Part 111 Rules. Section 11151(1) of Part 111, MCL 324.11151(1), provides, in part:

> In addition to any other relief granted under this subsection, the court may impose a civil fine of not more than $25,000.00 for each instance of violation and, if the violation is continuous, for each day of continued noncompliance . . .

57. Under Section 11151(9) of Part 111, MCL 324.11151(9), the attorney general may bring an action to recover the state's surveillance and enforcement costs.

58. Under Section 11151(10) of Part 111, MCL 324.11151(10), this Court may also award costs of litigation, including reasonable attorney and expert witness fees.

COUNT IV – PUBLIC NUISANCE

59. Paragraphs 1 through 58 are incorporated by reference.

60. A condition or activity that unreasonably interferes with public rights or threatens public welfare constitutes a public nuisance.

61. As set forth above, Diamond Chrome has created a public nuisance.

62. The State may bring an action to abate a public nuisance, and this Court has the authority and jurisdiction to compel abatement of such a nuisance.

RELIEF REQUESTED

Plaintiff requests this Honorable Court to grant the following relief:

A. Declare and adjudge that Diamond Chrome's conduct is unlawful and is in violation of Parts 31, 55, 111 and 201 of the NREPA;

B. Order Diamond Chrome to operate its facility in compliance with Parts 31, 55, 111 and 201;

C. Grant an injunction requiring Diamond Chrome to undertake the appropriate response activities and/or implement corrective action;

D. Order Diamond Chrome to allow MDEQ personnel to enter onto and inside of its facility at all reasonable times for the purpose of inspecting the facility and any logs or records maintained at the facility;

E. Require Diamond Chrome to pay Plaintiff's response activity costs incurred at or in relation to the Facility, plus statutory prejudgment interest;

F. Order Diamond Chrome to pay appropriate civil fines, attorney fees, and costs of surveillance and enforcement incurred by Plaintiff;

G. Order Diamond Chrome to abate the public nuisance.

H. Grant Plaintiff further relief as the Court finds just and appropriate.

Respectfully submitted,

Michael A. Cox
Attorney General

Kathleen L. Cavanaugh (P38006)
Assistant Attorney General
Environment, Natural Resources,
and Agriculture Division
525 W. Allegan, 5th Floor, South
Lansing, MI 48913
(517) 373-7540

Date: 10-22-03

S: NR/AC/cases/open/2002011839A/Diamond Chrome/complaint